

UNITED STATES INTERNATIONAL TRADE COMMISSION

SOLID UREA FROM ARMENIA, BELARUS, ESTONIA, LITHUANIA, ROMANIA,
RUSSIA, TAJIKISTAN, TURKMENISTAN, UKRAINE, AND UZBEKISTAN

Investigations Nos. 731-TA-339 and 340-A-I (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3248, October 1999)

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DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on solid urea from Armenia² would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders on solid urea from Belarus,³ Estonia,⁴ Lithuania,⁴ Romania,⁴ Russia, Tajikistan,⁴ Turkmenistan,³ Ukraine, and Uzbekistan³ would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on March 1, 1999 (64 F.R. 10020, March 1, 1999) and determined on June 3, 1999 that it would conduct expedited reviews (64 F.R. 31610, June 11, 1999).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on October 27, 1999. The views of the Commission are contained in USITC Publication 3248 (October 1999), entitled *Solid Urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: Investigations Nos. 731-TA-339 and 340-A-I (Review)*.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Chairman Bragg and Commissioner Koplan dissenting.

³ Commissioners Crawford and Askey dissenting.

⁴ Commissioners Crawford, Hillman, and Askey dissenting.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹ We further determine that revocation of the antidumping duty order covering solid urea from Armenia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

I. BACKGROUND

In July 1987, the Commission determined that an industry in the United States was being materially injured by reason of imports of urea from the German Democratic Republic (“GDR”), Romania, and the Union of Soviet Socialist Republics (“USSR”) that were being sold at less than fair value.³ On July 14, 1987, Commerce issued antidumping duty orders on imports of solid urea from the GDR, Romania, and the USSR.⁴ On June 29, 1992, following the division of the USSR in December 1991 into 15 independent states, Commerce divided the original antidumping duty order on solid urea from the USSR into 15 orders applicable to each independent state.⁵

On March 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on solid urea from Romania and the 15 independent states that formerly constituted the USSR (Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and

¹ Commissioner Hillman dissenting with respect to Estonia, Lithuania, Romania, and Tajikistan. See Dissenting Views of Commissioner Jennifer A. Hillman. Commissioner Hillman joins this opinion except as noted. Commissioners Crawford and Askey dissenting with respect to Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan. See Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. Commissioner Crawford joins in Sections I, II, III.A, III.B.1, IV.A, IV.B, and V of this opinion, except as otherwise noted, and in the other sections as specifically noted. Commissioner Askey generally joins in sections I, II, III, IV, and V of this opinion. Because she only cumulated the subject imports from Russia and Ukraine, she joins in sections III and IV to the extent that they apply to likely competition between Russian, Ukrainian, and domestic merchandise and to the likelihood of continuation or recurrence of material injury as a result of revocation of the order on the cumulated subject imports from Russia and the Ukraine.

² Chairman Bragg and Commissioner Koplan dissenting. They do not join in Section III.B.1 or Section V of this opinion. Chairman Bragg also does not join in Section III.A of this opinion.

³ Urea From the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics, Inv. Nos. 731-TA-338-340 (Final), USITC Pub. 1992 (July 1987) (“Original Determination”).

⁴ 52 Fed. Reg. 26367 (July 14, 1987).

⁵ 57 Fed. Reg. 28828 (June 29, 1992). Commerce noted that any interested party that believed the order should not apply, in whole or in part, to any of the new states could request a changed circumstances review. 57 Fed. Reg. at 28829. On April 3, 1998, Commerce revoked the antidumping duty order on solid urea from the former GDR, based on the fact that the Ad Hoc Committee of Domestic Nitrogen Producers, the petitioner in the original investigation, had expressed no further interest in the order against the former GDR. 63 Fed. Reg. 16471 (April 3, 1998).

Uzbekistan) would likely lead to continuation or recurrence of material injury.⁶ Commerce revoked the orders with respect to Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Latvia, and Moldova based on the lack of any notice of intent to participate by domestic interests in solid urea from the six countries.⁷ As a result, the Commission terminated its five-year reviews with respect to these countries.⁸

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁹ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In these reviews, the Ad Hoc Committee of Domestic Nitrogen Producers ("Ad Hoc Committee"), a trade association a majority of whose members produce solid urea and the petitioner in the original investigation, filed a response to the notice of institution as well as comments on adequacy.¹⁰ Agrium US, Inc. ("Agrium"), a small domestic producer that is not a member of the Ad Hoc Committee, also filed a response to the notice of institution and comments on adequacy.¹¹ The only respondent interested party to file a response to the notice of institution, as well as comments on adequacy, was the Government of Romania. The Commission did not receive a response from any respondent producers, importers, or exporters in any of the reviews on solid urea.

On June 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate. While the Commission found that the response from the Government of Romania was individually adequate, no responses from any Romanian producers, exporters, or U.S. importers were received, and the Commission accordingly found that the respondent interested party group response for Romania was inadequate. It found that the respondent interested party group responses for all

⁶ 64 Fed. Reg. 10020 (March 1, 1999).

⁷ 64 Fed. Reg. 24137 (May 5, 1999); 64 Fed. Reg. 28974 (May 28, 1999).

⁸ 64 Fed. Reg. 30358 (June 7, 1999).

⁹ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

¹⁰ The participating members of the Ad Hoc Committee are: CF Industries, Inc., Coastal Chem, Inc., Mississippi Chemical Corp., PCS Nitrogen, Inc., and Terra Industries, Inc. The only other member of the Ad Hoc Committee is J.R. Simplot Co., which does not produce solid urea in the United States and is therefore not participating in the sunset reviews. Response of Ad Hoc Committee to Notice of Institution ("Ad Hoc Committee Response") at 1, n.2 (April 20, 1999). The Ad Hoc Committee reported that in 1998 its participating members represented between 60 and 64 percent of domestic production of solid urea. Ad Hoc Committee Response at 65, n.109.

¹¹ Agrium reports that it accounted for *** percent of domestic solid urea production in 1998. Response of Agrium to Notice of Institution ("Agrium Response") at 19 (April 19, 1999).

the other reviews were inadequate as well.¹² Pursuant to section 751(c)(3)(B) of the Act,¹³ the Commission voted to conduct expedited reviews.¹⁴ Subsequently, Commerce extended the date for its final results in the expedited reviews from June 29, 1999, to August 30, 1999.¹⁵ On July 7, 1999, the Commission revised its schedule to conform with Commerce's new schedule.¹⁶

On October 5, 1999, the Ad Hoc Committee and Agrium filed comments pursuant to 19 C.F.R. § 207.62(d) arguing, as they had in their responses to the notice of institution, that revocation of the antidumping duty orders on solid urea from the subject countries would likely lead to a recurrence of material injury to the domestic solid urea industry within a reasonably foreseeable time. The Government of Romania argued in its response to the notice of institution and in comments filed on October 5, 1999, that revocation of the order on solid urea from Romania would not be likely to lead to a recurrence of material injury within a reasonably foreseeable time.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”¹⁷ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹⁸ In its final five-year review determination, Commerce defined the subject merchandise as follows:

Solid urea is a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. During the original investigations the merchandise was classified under item number 480.3000 of the Tariff Schedule of the United States Annotated (“TSUSA”). This merchandise is currently classifiable under item number 3102.10.00 of the Harmonized Tariff Schedule (“HTS”). The HTS item number is provided for convenience and customs purposes. The written description of the scope remains dispositive.¹⁹

¹² See Explanation of Commission Determination on Adequacy in Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan (June 1999).

¹³ 19 U.S.C. § 1675(c)(3)(B).

¹⁴ 64 Fed. Reg. 31610 (June 11, 1999). Commissioner Hillman dissented from the Commission's determination to conduct expedited reviews, finding a full review warranted in view of the response of the Government of Romania. See Explanation of Commission Determination on Adequacy in Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan (June 1999).

¹⁵ 64 Fed. Reg. 36333 (July 6, 1999).

¹⁶ 64 Fed. Reg. 38476 (July 16, 1999).

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

¹⁹ 64 Fed. Reg. 48360 (Sept. 3, 1999).

In the original investigations, the Commission defined the domestic like product as consistent with Commerce's scope of subject merchandise.²⁰ It noted that solid urea was sold in the United States in two forms, prills and granules, and that subject imports were virtually all in prilled form.²¹ The Commission further noted that prilled and granular urea are chemically identical and that, while there are some physical differences between them, they are generally suitable for the same uses and are fungible.²²

None of the parties to the instant reviews objects to the original like product definition, and no new information has been obtained during these reviews that warrants a departure from that definition. Accordingly, we define the domestic like product as solid urea.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."²³ We define the domestic industry, as the Commission did in the original investigations, to include all domestic producers of solid urea.

III. CUMULATION

A. Framework²⁴

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²⁵

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market.

²⁰ Original Determination at 3-4.

²¹ Original Determination at 4.

²² Original Determination at 4.

²³ 19 U.S.C. § 1677(4)(A).

²⁴ Chairman Bragg does not join Section III.A of this opinion. For a complete statement of Chairman Bragg's analytical framework regarding cumulation in sunset reviews, see *Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews*, found in *Potassium Permanganate From China and Spain*, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. ____ (Oct. 1999). In particular, Chairman Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation.

²⁵ 19 U.S.C. § 1675a(a)(7).

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry. We note that neither the statute nor the SAA provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.^{26 27} For these reviews, our “no discernible adverse impact” analysis is focused on the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.

As stated above, in order to cumulate, the statute requires that subject imports would be likely to compete with each other and with the domestic like product. The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.^{28 29 30} Only a “reasonable overlap” of competition is required.³¹ In five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists.

Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional factors, but also other significant conditions of competition that are likely to

²⁶ Vice Chairman Miller and Commissioners Hillman and Koplan note that the legislative history to the URAA provides guidance in the interpretation of this provision. The Senate Report on the URAA clarifies that “it is appropriate to preclude cumulation [in five-year reviews] where imports are likely to be negligible.” S. Rep. 103-412, at 51 (1994). The legislative history further explains that it is not appropriate “to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision” and, therefore, “the ‘no discernible adverse impact’ standard is appropriate in sunset reviews.” Thus, we understand the “no discernible adverse impact” provision to be largely a negligibility provision without the use of a strict numerical test of the sort now required by the statute in original antidumping and countervailing duty investigations. 19 U.S.C. § 1677(24). Indeed, before enactment of the URAA, cumulation was not required if the subject imports were “negligible and have no discernable adverse impact on the domestic industry.” 19 U.S.C. § 1677(7)(C)(v)(1994). Because of the similarity of the five-year provision with the pre-URAA test for negligibility, the Commission’s prior negligibility practice may provide some guidance in applying the “no discernible adverse impact” provision in five-year reviews.

²⁷ For a discussion of Commissioner Askey’s views on the meaning of the statutory provision addressing the discernible adverse impact of the subject imports, see her Additional Views.

²⁸ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market.

²⁹ Commissioner Crawford notes that the Court of International Trade has recognized repeatedly that analyses of substitutability may vary under different provisions of the statute, based upon the requirements of the relevant statutory provision. E.g., U.S. Steel Group v. United States, 873 F. Supp. 673, 697 (Ct. Int’l Trade 1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210 n.9 (Ct. Int’l Trade 1994); BIC Corp. v. United States, 964 F. Supp. 391 (Ct. Int’l Trade 1997). Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute.

³⁰ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

³¹ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.³²

Here, the statutory requirement that all of the solid urea reviews be initiated on the same day is satisfied. For the reasons discussed below, we determine to cumulate imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.^{33 34} We do not cumulate subject imports from Armenia because we find that subject imports from Armenia are likely to have no discernible adverse impact on the domestic industry.³⁵

³² See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992) (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

³³ Commissioner Koplan also cumulated subject imports from Armenia with the other subject imports. Commissioner Hillman only cumulated subject imports from Belarus, Russia, Turkmenistan, Ukraine, and Uzbekistan.

³⁴ For purposes of their analysis in these reviews, Commissioners Crawford and Askey find that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the orders are revoked, and thus cumulation is precluded under the statute. For a discussion of their views on these countries, see Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. However, they join the majority's finding of a lack of discernible adverse impact of the subject imports from Armenia and therefore join in section III.B.1 of this opinion.

Commissioner Crawford did not exercise her discretion to cumulate the subject imports from Russia and Ukraine in her determinations in those reviews. See Views of Commissioner Carol T. Crawford.

³⁵ Chairman Bragg and Commissioner Koplan dissenting.

B. Discussion

1. No Discernible Adverse Impact³⁶

The Armenian fertilizer industry has been idled for the past ten years, having closed its single solid urea plant following an earthquake in 1988.³⁷ Thus, Armenia has not exported solid urea to the United States since the orders were imposed, and currently has no solid urea capacity or production. We note that the record indicates that Armenia may reactivate its solid urea plant at some point, but consider such information to be speculative and not persuasive that Armenian production and exports will resume in the reasonably foreseeable future.³⁸ We note in this regard that it is costly to restart production once a urea plant has been shut down.³⁹

³⁶ Chairman Bragg and Commissioner Koplan do not find that imports of solid urea from Armenia are likely to have no discernible adverse impact on the domestic industry in the event of revocation. Consequently, Chairman Bragg and Commissioner Koplan do not join in this section of the opinion.

Chairman Bragg and Commissioner Koplan note that the statute authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record; or (2) an interested party, or any other person, withholds information requested by the agency, or fails to provide such information in the time or in the form or manner requested, or significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(I) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information contained in the record of the Commission’s original investigation or any other information placed on the record in a review. Id. See infra n.75.

Chairman Bragg and Commissioner Koplan further note that the evidence on the record concerning projected production and production capacity in Armenia for the years 2000 and 2001 is less than definitive. Response of the Ad Hoc Committee of Domestic Nitrogen Producers to Notice of Institution of Five-Year Sunset Reviews, Exhibit 12, at 9-10, 27. Nevertheless, they choose to rely upon record evidence indicating that Armenia will achieve an annual production capacity of 141,000 tons in 2000 and 2001. Id. at 9, 27. Chairman Bragg and Commissioner Koplan also rely upon record evidence indicating production in Armenia of 50,000 tons in 2000 and 75,000 tons in 2001. Id. at 10. Notably, these projections are not substantially dissimilar to projections for other subject countries such as Estonia, Lithuania, and Tajikistan. See id. at 9-10.

Based upon the high degree of price sensitivity for this commodity-type product, as well as current conditions of declining prices and global oversupply, Chairman Bragg and Commissioner Koplan find that revocation of any of the orders, including the order on Armenia, would likely result in a discernible adverse impact on the domestic industry.

Chairman Bragg and Commissioner Koplan also find a likely overlap of competition among all subject imports and between subject imports and the domestic like product. See infra nn.43 & 44.

Commissioner Koplan further finds there are no other circumstances or significant differences in the conditions of competition in these markets that persuade him to not exercise his discretion to cumulate subject imports.

Accordingly, Chairman Bragg and Commissioner Koplan determine to cumulate all subject imports in these grouped reviews.

³⁷ Ad Hoc Committee Response, Exhibit 12 at 27.

³⁸ See Ad Hoc Committee Response, Exhibit 12 at 27.

³⁹ Confidential Staff Report (“CR”) at I-13, Public Staff Report (“PR”) at I-9.

Moreover, even assuming that production from Armenia would resume in the reasonably foreseeable future, a study prepared on behalf of the domestic industry by the organization Fertecon forecasts that Armenia's production and capacity volumes would be extremely small in relation to the U.S. market and other foreign suppliers. Specifically, the Fertecon study estimates that Armenia's capacity will be 155,100 short tons in 2000, which would represent approximately 1.8 percent of 1998 U.S. apparent consumption.⁴⁰ However, Armenia's projected actual production for 2000 is only 55,000 short tons. Even assuming the entire actual production were exported to the United States, it would represent only 0.65 percent of 1998 U.S. apparent consumption.⁴¹ Even if imports from Armenia were to resume, these imports would not enter the United States solely at the expense of domestic producers, given that in 1998 nonsubject imports held a market share of approximately 43 percent.⁴² The fact that nonsubject imports as well as the domestic producers would lose market share further diminishes the impact of any imports from Armenia on the U.S. industry.

Accordingly, we find that, given the current lack of production in Armenia, the speculative nature of reports that production will resume, and the known high cost to reactivate urea plants, it is unlikely that Armenia will resume solid urea production and exports to the United States in the reasonably foreseeable future. We further find that, even were production and exports to the United States to resume, they would be at minimal levels for the reasonably foreseeable future. Accordingly, we find that imports from Armenia are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order is revoked. Therefore, we find that the statute precludes cumulation of Armenian subject imports with the other subject imports.

2. Reasonable Overlap of Competition^{43 44 45 46}

The domestic producers argue that there is a reasonable overlap of competition and that the Commission should exercise its discretion to cumulate subject imports from all the subject countries. Specifically, they assert that solid urea from each of the subject countries and from the United States is

⁴⁰ See Ad Hoc Committee Response, Exhibit 12 at 9; Table I-4, CR at I-21, PR at I-18.

⁴¹ See Ad Hoc Committee Response, Exhibit 12 at 10; Table I-4, CR at I-21, PR at I-18.

⁴² Table I-4, CR at I-20-21, PR at I-17-18.

⁴³ Chairman Bragg finds a likely reasonable overlap of competition among all subject imports, and between subject imports and the domestic like product, in the event of revocation. For a discussion of Chairman Bragg's determination regarding cumulation, see *supra* n.36.

⁴⁴ Commissioner Koplan finds this section applies equally to Armenia.

⁴⁵ As noted previously, Commissioner Crawford did not cumulate any of the subject imports, and she does not reach the issue of whether there is a reasonable overlap of competition. See Views of Commissioner Carol T. Crawford. Therefore, she does not join this discussion.

⁴⁶ As previously indicated, Commissioner Askey finds that there is no likelihood of a discernible adverse impact on the domestic industry if the orders were revoked for subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan, in addition to Armenia. She finds that she is therefore precluded from cumulating these subject imports with those from Russia and Ukraine. Commissioner Askey cumulated the subject imports from Russia and Ukraine. She believes that the factors discussed in section III.B.2 apply generally to her determination to cumulate the subject imports from these two countries. She therefore joins in the discussion in section III.B.2 of this opinion but only to the extent that it applies to likely competition between Russian, Ukrainian, and domestic merchandise. Moreover, she does not join the discussion of the reasons the majority chose to exercise their discretion to cumulate.

substitutable; that, while there have been virtually no exports of solid urea from the subject countries to the United States since the orders were imposed, the subject countries currently offer solid urea simultaneously in the same geographical markets, including, for example, India, China, Brazil, the United Kingdom, and Western Europe; that the subject countries sell solid urea in similar channels of distribution; that foreign producers in several of the subject countries depend on Russian natural gas to produce solid urea; and that some of the foreign exporters ship solid urea through each other's ports.⁴⁷

The record indicates that domestically produced and imported solid urea are substitutable products. Solid urea is produced and sold in two forms in the United States, prilled and granular, which are chemically identical.⁴⁸ As was true at the time of the original investigation, a little more than half of the solid urea produced in the United States is of the granular type, while imported solid urea is almost entirely in prilled form.⁴⁹ While the record of the original investigation indicated some quality differences between subject imports and domestically produced prilled urea, domestic and imported product were generally found to be substitutable.⁵⁰ In addition, both prilled urea, whether domestically produced or imported, and granular urea are suitable for use alone as a single-nutrient fertilizer or for blending with other solid fertilizers for field applications.⁵¹ Accordingly, we find that the record suggests that there would be a reasonable level of fungibility between U.S. production and likely imports if the orders were revoked.⁵²

The record also indicates that the channels of distribution for domestic and imported solid urea would likely be similar and that the subject and domestic merchandise would likely be sold in the same or similar markets if the orders were revoked. International trading companies offer solid urea for sale from multiple countries, including the subject countries.⁵³ At the time of the original investigation the port of New Orleans was the principal port of entry for subject imports.⁵⁴ Moreover, the Commission found that domestic and imported urea were directed to the same customers and were frequently commingled in wholesalers' warehouses.⁵⁵ The Ad Hoc Committee maintains that these fundamental conditions of competition in the U.S. market identified in the original investigation have remained relatively unchanged since the antidumping duty orders were imposed in 1987.⁵⁶

The other traditional competition factor we consider for cumulation purposes (simultaneous market presence) is less easy to evaluate, given that U.S. imports of solid urea from the subject countries have been virtually non-existent since the orders were imposed.

Overall, we find that there would likely be a reasonable overlap of competition between subject imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan⁵⁷ and the domestic like product as well as among the subject imports from these countries, if the

⁴⁷ Ad Hoc Committee Response at 27-37.

⁴⁸ CR at I-7, PR at I-6.

⁴⁹ CR at I-7-8, PR at I-6-7.

⁵⁰ CR at I-7, n.19, PR at I-6-7, n.19; Original Determination at 8.

⁵¹ CR at I-7, PR at I-6.

⁵² CR at I-7, PR at I-6.

⁵³ CR at I-16, n.37, PR at I-13, n.37.

⁵⁴ CR at I-8, PR at I-7.

⁵⁵ Original Determination at 8, n.22.

⁵⁶ CR at I-8, n.21, PR at I-7, n.21.

⁵⁷ Chairman Bragg and Commissioner Koplan also cumulated subject imports from Armenia with the other
(continued...)

antidumping duty orders covering solid urea from these countries were revoked.⁵⁸ We therefore conclude that the subject imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to compete with each other and with the domestic like product in the U.S. market if the orders were revoked.⁵⁹ Moreover, if the orders are revoked, subject imports would likely compete in the U.S. market under similar conditions of competition. In this regard, we have considered the substantial excess capacity in the subject countries, the export orientation of the foreign industries, the demonstrated ability of exporters to shift sales from one market to another within a relatively short period of time, and the current oversupply of urea on the world market.⁶⁰

For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan⁶¹ in these reviews.

⁵⁷ (...continued)

subject imports and find that revocation of the antidumping duty orders covering solid urea from all the subject countries, including Armenia, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See n.36, supra.

Commissioner Hillman cumulated subject imports from Belarus, Russia, Turkmenistan, Ukraine, and Uzbekistan. She finds that the same factors discussed in this section with respect to likely competition and the exercise of discretion support her determination to cumulate imports from these five countries. She finds that imports from the remaining subject countries – Romania, Estonia, Lithuania, and Tajikistan – are likely to have no discernible adverse impact on the domestic industry. See Dissenting Views of Commissioner Jennifer A. Hillman.

As noted above, Commissioner Askey cumulated only the subject imports from Russia and Ukraine for purposes of her analysis in these reviews. She finds that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the order is revoked and she has therefore not cumulated the subject imports from these countries with those from Russia and Ukraine. For a discussion of her views on these countries, see Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey.

Commissioner Crawford also finds that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the order is revoked, and therefore the statute precludes cumulation of the subject imports from these countries. She did not exercise her discretion to cumulate the subject imports from Russia and Ukraine in her determinations in those reviews. For a discussion of her views on these countries, see Views of Commissioner Carol T. Crawford.

⁵⁸ Chairman Bragg does not join the remainder of this section.

⁵⁹ See n.57, supra.

⁶⁰ Commissioner Askey does not join this statement. She did not consider these factors when choosing to exercise her discretion to cumulate the subject imports from Russia and Ukraine.

⁶¹ See n.57, supra.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON SOLID UREA FROM BELARUS, ESTONIA, LITHUANIA, ROMANIA, RUSSIA, TAJIKISTAN, TURKMENISTAN, UKRAINE, AND UZBEKISTAN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME^{62 63 64}

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping finding or order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the finding or order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁶⁵ The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo - the revocation [of the finding or order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁶⁶ Thus, the likelihood standard is prospective in nature.⁶⁷ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁶⁸ According to the SAA, a “‘reasonably foreseeable time’

⁶² Commissioner Crawford dissenting with respect to Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan. See Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. Commissioner Hillman dissenting with respect to Estonia, Lithuania, Romania, and Tajikistan. See Dissenting Views of Commissioner Jennifer A. Hillman.

⁶³ Chairman Bragg and Commissioner Koplan find that the following discussion applies equally to Armenia.

⁶⁴ For purposes of her analysis in these reviews, Commissioner Askey cumulated the subject imports from Russia and Ukraine. She finds that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the orders covering these countries are revoked and finds that revocation of the antidumping orders covering these countries would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For a discussion of her views on these countries, see the Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. However, she believes that the same general factors discussed in the majority’s recurrence or continuation of material injury analysis apply to her affirmative determination with respect to the subject imports from Russia and Ukraine. Accordingly, she joins in the discussion set forth in section IV of this opinion but only to the extent noted.

⁶⁵ 19 U.S.C. § 1675a(a).

⁶⁶ SAA at 883-84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁶⁷ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁶⁸ 19 U.S.C. § 1675a(a)(5).

will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{69 70}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁷¹ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{72 73}

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”^{74 75} As noted above, no respondent interested parties that are producers, exporters, or

⁶⁹ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁷⁰ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, their analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁷¹ 19 U.S.C. § 1675a(a)(1).

⁷² 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁷³ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in these matters.

⁷⁴ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of the original determination and any other information placed on the record. *Id.*

⁷⁵ Chairman Bragg and Commissioners Koplan and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. “[T]he

(continued...)

U.S. importers of the subject merchandise responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the record in the original investigation, limited information collected by the Commission since the institution of these reviews, and information submitted by the Ad Hoc Committee, Agrium, and the Government of Romania.⁷⁶

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the Commission is directed to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁷⁷ According to the domestic producers, the fundamental conditions of competition in the U.S. market identified in the original investigation have remained relatively unchanged since the antidumping duty orders were imposed in 1987.⁷⁸ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for solid urea.

In the original investigation, the Commission characterized urea as a fungible, widely traded commodity that is generally sold on the basis of price.⁷⁹ Of the two forms in which solid urea is sold in the United States, roughly half of U.S. production (52 percent in 1997) is of the granular type, while virtually all imports are prilled.⁸⁰ Although there may be some physical and quality differences between the subject and domestic merchandise, the two forms are chemically identical and both types are suitable for use alone as a single-nutrient fertilizer or for blending with other solid fertilizers for field applications.⁸¹ Therefore, the domestic and imported product are generally considered substitutable.^{82 83}

⁷⁵ (...continued)

Commission balances all record evidence and draws reasonable inferences in reaching its determinations." SAA at 869 (emphasis added). Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." *Id.*

⁷⁶ Vice Chairman Miller and Commissioner Hillman emphasize that they have reached their determinations in the absence of contrary evidence or argument from respondent interested parties other than the Government of Romania.

⁷⁷ 19 U.S.C. § 1675a(a)(4).

⁷⁸ CR at I-8, n.21, PR at I-7, n.21.

⁷⁹ Original Determination at 8-10.

⁸⁰ CR at I-7-8, n.20, PR at I-7, n.20.

⁸¹ CR at I-7, n.19, PR at I-6-7, n.19.

⁸² Original Determination at 8. Granular urea has some advantages over the prilled form and, at the time of the original investigation, commanded a 7 percent higher average price. CR at I-7, n.19, PR at I-6-7, n.19.

⁸³ Commissioner Crawford finds that subject and nonsubject imports are good substitutes for each other, but only moderate substitutes for the domestic like product. See Views of Commissioner Carol T. Crawford, infra.

Demand for urea is derived from several factors, including activity in the domestic farm sector, weather and soil conditions, the availability of specific equipment to spread the fertilizers, and, to some extent, the price of urea relative to the price of the other major nitrogen fertilizers (anhydrous ammonia, nitrogen solutions, and ammonium nitrate), which may be used with or instead of urea in at least some applications.⁸⁴ Of the two solid nitrogen fertilizers, solid urea generally has the lowest cost per unit of nitrogen.⁸⁵

The United States remains a major consuming market, and, similar to circumstances at the time of the original investigation, purchasers in the U.S. market respond relatively quickly to price differences between the domestic and imported product.⁸⁶ Because fertilizer trade publications provide marketing information on a weekly basis to both buyers and sellers, urea prices can change quickly based upon the supply and demand balance, or a perception of that balance.⁸⁷ Transportation costs, however, are a significant mitigating factor in marketing decisions.⁸⁸

In 1996 U.S. apparent consumption, at 6.7 million short tons, was the same as that in 1986, the year the original investigation was instituted, and increased by 27 percent to 8.4 million short tons from 1996 to 1998, driven by an increase in the global demand for downstream agricultural products.⁸⁹ The U.S. market share held by U.S. producers had dropped to 50.6 percent in 1986 before the orders were imposed, then rose in 1987 after the orders took effect, and was at 57.2 percent in 1998.⁹⁰ Non-subject imports hold the remaining 43 percent of the U.S. market, a higher percentage than at the time of the original investigation.⁹¹

The U.S. industry has undergone restructuring and consolidation since the original investigation. According to industry experts, this consolidation has improved efficiency by reducing the number of producers (from 24 to 12) and has improved economies of scale.⁹² In the last three years (1996-1998) both domestic production and U.S. shipments of solid urea increased, by 7 percent and 24 percent respectively.⁹³

Urea plants are designed exclusively for urea production.⁹⁴ Urea plants must operate continuously and at capacity utilization rates of at least 80 percent to maintain the chemical reaction process by which urea is manufactured.⁹⁵ Once plants are shut down, it is costly to maintain them and to restart

⁸⁴ CR at I-7, I-20, PR at I-6, I-16-17.

⁸⁵ CR at I-20, PR at I-17.

⁸⁶ Ad Hoc Committee Response at 11; see also Agrium Response at 6-7.

⁸⁷ CR at I-8, PR at I-7.

⁸⁸ CR at I-8, PR at I-7.

⁸⁹ CR at I-20, PR at I-17.

⁹⁰ Table I-4, CR at I-21, PR at I-18. See Ad Hoc Committee Response at Exhibit 3 for estimated 1987 U.S. market share of 54.9 percent for U.S. producers.

⁹¹ Table I-4, CR at I-21, PR at I-18.

⁹² CR at I-9-11, PR at I-7-9.

⁹³ CR at I-13, PR at I-11.

⁹⁴ CR at I-13, PR at I-9.

⁹⁵ CR at I-11, I-13, PR at I-9.

production.⁹⁶ U.S. capacity utilization, which decreased from 81 percent to 64 percent from 1984 to 1986, was 93.9 percent in 1998.⁹⁷

Several countries, in addition to the subject countries, produce urea, and it is widely traded throughout the world.⁹⁸ In contrast to the period immediately following the original investigation, when world urea demand exceeded world supply, there currently exists a worldwide surplus of urea that is driving prices down.⁹⁹ In part, this oversupply is due to the fact that China, which accounted for 25.8 percent of world urea imports in 1996, including imports from most of the subject countries, closed its market to urea imports in mid-1997.¹⁰⁰ Moreover, the reduced cost of natural gas, the largest single cash cost in producing urea, has substantially reduced the production costs of the subject merchandise in recent years.¹⁰¹

All the countries subject to these reviews entered into a period of significant transformation of their basic political, social, and economic structures, including their urea industries, after the original antidumping duty orders were imposed. The USSR, as noted previously, divided into 15 independent states in 1991. The Government of Romania describes the period since the original investigation as one of “profound transformation,” which has affected all aspects of Romania’s economy, including its urea industry.¹⁰² The Romanian government describes the urea industry as in the process of restructuring and privatization.¹⁰³ The government explains that, because the industry is being privatized, its marketing decisions are not driven by state policy emphasizing exports at all costs.¹⁰⁴ It reports that Romania has maintained and developed a stable position in non-U.S. urea markets since the original order was imposed.¹⁰⁵

Based on the record evidence, we find that these conditions of competition in the U.S. solid urea market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. solid urea market provide us with a reasonable basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.¹⁰⁶

⁹⁶ CR at I-13, PR at I-9.

⁹⁷ INV-W-229, Table I-2, CR at I-12-13, PR at I-10-11.

⁹⁸ CR at I-22, PR at I-17.

⁹⁹ CR at I-22, PR at I-17; Agrium Response at 5.

¹⁰⁰ Ad Hoc Committee Response at 67-68.

¹⁰¹ Agrium Response at 5.

¹⁰² Response of Government of Romania to Notice of Institution (“Romanian Response”) at 3 (April 20, 1999).

¹⁰³ CR at I-24, PR at I-20.

¹⁰⁴ Romanian Response at 6-7.

¹⁰⁵ Romanian Response at 3.

¹⁰⁶ As noted previously, Commissioner Crawford did not cumulate any of the subject imports, and thus joins the remainder of Section IV that is not inconsistent with her analysis and as noted herein. For her analysis with respect to Ukraine and Russia, see Views of Commissioner Carol T. Crawford, infra.

C. Likely Volume of Cumulated Subject Imports^{107 108}

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹⁰⁹ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.¹¹⁰

During the period of the original investigation, subject imports¹¹¹ increased sharply, particularly from 1985 to 1986. U.S. market penetration by the cumulated subject imports increased to 17.8 percent in 1986, from 12.4 percent in 1984.¹¹² Although U.S. imports of solid urea from Romania and the USSR increased by 50 percent in volume from 1984 to 1986, there have been no imports from Romania and only minimal reported imports from any of the other subject countries since the antidumping duty orders were imposed.¹¹³

Several factors support the conclusion that subject import volume is likely to be significant if the orders are revoked. First, urea capacity utilization in the subject countries is low: 54 percent for nearly all of the former Soviet Union (“FSU”) countries and 4.2 percent for Romania in 1998.¹¹⁴ These subject countries generally do not consume their urea production internally and rely therefore on export markets.¹¹⁵ For Romania, the ratio of exports to production was 88 percent in 1996, while the FSU cumulated countries

¹⁰⁷ For purposes of the volume, price, and impact analyses in Sections IV.C, IV.D, and IV.E of this opinion, “cumulated subject imports” are imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, and for Chairman Bragg and Commissioner Koplan, imports from Armenia as well.

¹⁰⁸ For Commissioner Askey, the cumulated subject imports consist of imports of solid urea from Russia and Ukraine.

¹⁰⁹ 19 U.S.C. § 1675a(a)(2).

¹¹⁰ 19 U.S.C. § 1675a(a)(2)(A)-(D).

¹¹¹ Subject imports at the time of the original investigation comprised imports from the former German Democratic Republic (“GDR”), the USSR as a whole, and Romania. Commerce, as noted previously, revoked the antidumping duty order on solid urea from the former GDR in 1998. 63 Fed. Reg. 16471 (April 3, 1998).

¹¹² Original Determination at 9.

¹¹³ CR at I-16, PR at I-13.

¹¹⁴ Tables I-5, I-6, CR at I-25-27, PR at I-21-22. Commissioners Crawford and Askey note that the capacity utilization rates for Russia and Ukraine have fallen since 1996. The capacity utilization rates for Russia and Ukraine, respectively, were 73.1 and 80.3 percent in 1996, 54.8 and 80.0 percent in 1997, and 49.4 and 61.2 percent in 1998, and they are projected to be 50.2 and 64.2 percent in 1999. CR and PR at Table I-7. They also note that these two countries comprise, by far, the largest portion of available excess capacity of the former Soviet states that remain subject countries.

¹¹⁵ Ad Hoc Committee Response at 68.

together exported 87 percent of their urea in 1998.¹¹⁶ Moreover, the subject countries comprise the largest group of solid urea exporters in the world, and their urea exports in 1998 accounted for 24 percent of total world exports.¹¹⁷ Their internal consumption of solid urea reportedly was only 1.8 percent of total world urea consumption in that same year.¹¹⁸

China, which was the largest urea-consuming market in the world and by far the largest market for urea imports, closed its borders to urea imports in mid-1997, making the United States the second largest urea import market in the world.¹¹⁹ Because many of the subject countries exported substantial volumes of urea to China prior to 1997, the closure of the Chinese market represents the loss of a significant export market for many subject producers.¹²⁰

We find that the relative strength of U.S. demand for urea, as well as the barriers to urea imports in China, provides significant incentives to the subject country producers to increase their exports to the United States should the orders be revoked, particularly given the high overall level of underutilized capacity in the subject countries. We note, moreover, that, faced with significant unused production capacity and the effective closing of key markets, such as China and, for Russia, the European Union,¹²¹ the subject countries have already demonstrated their ability to shift export shipments readily to other markets.¹²² The record shows that, as the subject countries' urea exports to China generally declined after 1997, their exports to Europe and Latin America increased significantly.¹²³

Based on the foregoing, we find it likely that the subject countries, which ceased exports of solid urea to the United States after the orders were imposed, would, upon revocation of the orders, resume exports to the U.S. market. Given the generally low capacity utilization rates in these countries and the substitutable nature of the product, we find that import volumes would rise significantly if the orders are removed.¹²⁴ Consequently, we conclude that cumulated subject imports would likely increase to a significant level and would regain significant U.S. market share if the orders are revoked.

D. Likely Price Effects of Cumulated Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the

¹¹⁶ CR at I-27, PR at I-20. Commissioners Crawford and Askey note that Russian and Ukrainian producers also rely on export markets for a significant portion of their shipments as well. CR and PR at Table I-7.

¹¹⁷ Ad Hoc Committee Response at 25. Export data for Romania for 1998 were not available. Ad Hoc Committee Response, Exhibit 12 at 22.

¹¹⁸ Ad Hoc Committee Response at 25.

¹¹⁹ Ad Hoc Committee Response at 26-27.

¹²⁰ Tables I-5, I-7, CR at I-25, I-31, PR at I-21, I-25.

¹²¹ The European Union in 1995 imposed an antidumping duty order on solid urea imports from Russia. Ad Hoc Committee Response at 26.

¹²² Agrium Response at 9.

¹²³ Table I-7, CR at I-31, PR at I-25; Ad Hoc Committee Response, Exhibit 12 at 11-13.

¹²⁴ See SAA at 890.

United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.¹²⁵

In the original investigations, the Commission found a significant decline in U.S. urea prices, as reflected in the decline in unit values, which was most marked in 1985-1986.¹²⁶ The Commission found that monthly domestic prices fell by 41 to 56 percent, coincident with significant underselling by subject imports.¹²⁷ The underselling also resulted in lost sales by the domestic producers.¹²⁸

Because there have been no U.S. imports of solid urea from Romania and only minimal reported imports from the other subject countries since 1986, no current data are available for subject country pricing in the U.S. market.¹²⁹ However, the record in these reviews reveals that, in the face of a growing worldwide surplus of urea and aggressive competition by imports in third-country markets, U.S. prices have declined. The U.S. price declined steadily from \$185 per short ton in 1996 to \$124 per short ton in 1998.¹³⁰ The unit values of U.S. imports from nonsubject sources (excluding Canada) declined from \$181 per short ton in 1996 to \$115 per short ton in 1998.¹³¹ Agrium maintains that the decline in nonsubject import prices is attributable in part to the competition the nonsubject imports face in third-country markets from subject country imports.¹³²

The limited information in the record regarding current pricing indicates that cumulated subject imports would be likely to undersell the domestic product and have significant adverse price effects, as they did before the imposition of the orders, if the orders were revoked. Urea continues to be, as at the time of the original investigation, a widely traded, substitutable commodity, for which price is a significant purchase factor. Notwithstanding some quality differences between the imported and domestic product,¹³³ consumers generally purchase from the lowest priced supplier,¹³⁴ particularly with respect to the same form of urea. Solid urea producers from the subject countries thus would likely have an incentive to price aggressively in order to regain market share.

Moreover, the domestic producers submitted information indicating that the subject countries price urea aggressively in third-country markets.¹³⁵ The record reveals that subject country exports to China undersold non-subject country exports to China, on a per short ton basis, by \$5.08 in 1995, \$12.01 in 1996,

¹²⁵ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

¹²⁶ Original Determination at 9.

¹²⁷ Original Determination at 9.

¹²⁸ Original Determination at 10.

¹²⁹ CR at I-16, PR at I-13. Commissioners Crawford and Askey note that there have been only minimal levels of subject imports from Russia and the Ukraine as well.

¹³⁰ Table I-2, CR at I-12, PR at I-10.

¹³¹ Table I-3, CR at I-18-19, PR at I-15-16.

¹³² Table I-3, CR at I-18-19, PR at I-15-16.

¹³³ CR at I-7, n.19, PR at I-6-7, n.19.

¹³⁴ Ad Hoc Committee Response at 55.

¹³⁵ Ad Hoc Committee Response at 52. Commissioner Askey notes that she does not join in the following paragraphs discussing price competition in third-country markets.

and \$37.78 in 1997.¹³⁶ Subject country exports to Canada likewise undersold non-subject country exports to Canada by as much as \$54.63 per short ton during the same period.^{137 138}

In the absence of detailed information regarding the conditions of competition in these third-country markets, we do not place significant weight on the information submitted by the domestic producers regarding the subject countries' aggressive pricing behavior in third countries. However, we view the information on the subject countries' pricing practices in third-country markets as consistent with their behavior in the U.S. market before the orders were imposed and as indicative generally of aggressive pricing behavior.¹³⁹

We find that, given the world oversupply of urea, the excess production capacity in the subject countries, the importance of price to purchasers, the aggressive pricing behavior of subject country producers,¹⁴⁰ and their focus on export markets, it is likely that, should the orders be revoked, cumulated subject imports would enter the United States at prices that would significantly depress or suppress U.S. prices.

For the foregoing reasons, we find that revocation of the antidumping duty orders would be likely to lead to significant underselling by the cumulated subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Cumulated Subject Imports

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹⁴¹ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.¹⁴² As instructed by the statute, we have considered the extent to which any

¹³⁶ Ad Hoc Committee Response at 53. The Government of Romania points out that Romania did not export urea to China in 1997. Comments of Government of Romania on Staff Report at 2-3 (Oct. 5, 1999).

¹³⁷ Ad Hoc Committee Response at 53.

¹³⁸ The domestic producers offer, in addition, a comparison of current U.S. urea prices with a constructed Black Sea price to the United States, noting that in 1998 the constructed Black Sea price was almost 31 percent below the U.S. Gulf Coast price. Ad Hoc Committee Response at 54, Exhibit 5; Agrium Response at 13-14.

¹³⁹ Chairman Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original investigation.

¹⁴⁰ Commissioner Askey did not rely on this factor in her analysis.

¹⁴¹ 19 U.S.C. § 1675a(a)(4).

¹⁴² 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its final five-year review determinations Commerce
(continued...)

improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.¹⁴³

The Commission found in the original investigation that the decline in urea prices, as reflected in the decline in unit values, caused the domestic industry's net sales to decline much more than the cost of goods sold, resulting in a marked decline in gross profit and operating income.¹⁴⁴ The industry experienced a significant decline in profitability, particularly in 1985-1986.¹⁴⁵ Its ratio of operating income to net sales declined from 18 percent in 1984 to 1.4 percent in 1986.¹⁴⁶ The U.S. solid urea price (per short ton) declined from \$157 in 1984 to \$96 in 1986.¹⁴⁷ The quantity of U.S. shipments remained about the same from 1984 to 1986 (3.25 million short tons as compared with 3.29 million short tons) but the value declined dramatically -- from \$476.8 million in 1984 to \$340.6 million in 1986.¹⁴⁸ Capacity utilization declined from 80.9 percent in 1984 to 63.5 percent in 1986.¹⁴⁹

After imposition of the orders, subject imports effectively ceased.¹⁵⁰ The domestic producers maintain that U.S. market share, prices, and profitability quickly rebounded and have remained well above 1986 levels.¹⁵¹ We do not find that the domestic industry is currently in a weakened state, as contemplated by the vulnerability criterion of the statute.¹⁵² We note nevertheless that U.S. prices for solid urea fell rapidly from 1996 to 1998.¹⁵³

We found above that revocation of the antidumping duty orders would lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic product and significantly depress U.S. prices. We find that the volume and price effects of the cumulated subject

¹⁴² (...continued)

determined that revocation of the antidumping duty orders on solid urea from the subject countries would likely lead to continuation or recurrence of dumping at the following margins: Romania -- I.C.E. Chimica and All Others, 90.71 percent; Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan -- Soyuzpromexport ("SPE") and Country-wide, 68.26 percent; Phillipp Brothers, Ltd. and Phillipp Brothers, Inc., 53.23 percent. 64 Fed. Reg. 48360, 48362 (Sept. 3, 1999); 64 Fed. Reg. 48357, 48360 (Sept. 3, 1999).

¹⁴³ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

¹⁴⁴ Original Determination at 9.

¹⁴⁵ Original Determination at 9.

¹⁴⁶ Table I-2, CR at I-12, PR at I-10.

¹⁴⁷ Table I-2, CR at I-12, PR at I-10.

¹⁴⁸ Table I-2, CR at I-12, PR at I-10.

¹⁴⁹ Table I-2, CR at I-12, PR at I-10.

¹⁵⁰ CR at I-16, PR at I-13.

¹⁵¹ CR at I-13, PR at I-11.

¹⁵² We note, for example, that, although the U.S. industry's operating income declined from 1996 to 1998, it declined from an historical high level and remains well above 1986 levels. Table I-2, CR at I-12, PR at I-10.

¹⁵³ Agrium Response at 16.

imports would have a significant negative impact on the domestic industry and would likely cause the domestic industry to lose market share.¹⁵⁴

We find it likely that the effect of revocation on domestic prices, and production and sales would be significant. The price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in employment declines for domestic firms.

Accordingly, based on the limited record in this review, we conclude that, if the antidumping duty orders were revoked, subject imports from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.^{155 156 157}

¹⁵⁴ The record reflects that even if 21 percent of the volume of imports from the cumulated subject countries that had been exported to China were diverted to the U.S. market, cumulated subject imports would reach the volume and market share levels found to have injured the domestic industry in the original investigation. Ad Hoc Committee Response at 58, n.99. While we recognize that, were the cumulated subject imports to regain U.S. market share, a portion of their gain might be at the expense of nonsubject imports, we nevertheless find it likely that, as at the time of the original investigation, a significant portion of U.S. market share would be lost to U.S. producers. From 1984 to 1986, the U.S. market share held by nonsubject imports, as well as by subject imports, increased, while the domestic producers' U.S. market share declined dramatically. See Table I-4, CR at I-21, PR at I-18.

¹⁵⁵ Chairman Bragg and Commissioner Koplan reach the same conclusion with regard to Armenia.

¹⁵⁶ Commissioners Crawford and Askey find that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan would be likely to have no discernible adverse impact on the domestic industry within a reasonably foreseeable time frame. Therefore, they further find that any impact from these countries would not be significant. See their Dissenting Views.

¹⁵⁷ Commissioner Hillman determines that revocation of the antidumping orders with respect to solid urea from Belarus, Russia, Turkmenistan, Ukraine, and Uzbekistan is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. She bases this determination on the same analysis of likely volume, price effects, and impact that is set out above. All of the facts discussed above apply to cumulated imports from these five subject countries, with the following exceptions: (1) 1998 capacity utilization in the five subject countries was 53 percent (compared to 54 percent for all subject FSU countries); (2) the five subject countries exported 89 percent of their urea production in 1998 (compared to 87 percent for all subject FSU countries); and (3) in 1998 the five subject countries accounted for approximately 23 percent of total world exports (compared to 24 percent for all subject countries) (adjustment based on export data in the Fertecon report (Ad Hoc Committee Response, ex. 12)). Moreover, Commissioner Hillman does not join: (1) the discussion of Romania; (2) the reference to the share of 1998 world consumption of urea accounted for by all subject countries; or (3) the reference to underselling in the Chinese market by urea imports from all subject FSU countries as compared to urea imports from non-subject countries.

V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SOLID UREA FROM ARMENIA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME¹⁵⁸

As discussed above, we find that imports from Armenia are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order is revoked. Therefore, the statute precludes cumulation of the subject imports from Armenia with those from the other subject countries. We note that there has been no production of solid urea in Armenia since 1988 when an earthquake forced the shutdown of its one urea plant, and resumption of production does not appear likely in the reasonably foreseeable future. Moreover, even assuming production were to resume, the evidence indicates that significant imports of urea from Armenia to the United States are not likely within a reasonably foreseeable time. Nor is there any information indicating that subject imports from Armenia would be likely to have significant price effects or a significant adverse impact on the domestic industry within the reasonably foreseeable future.¹⁵⁹ Thus, we determine that revocation of the antidumping duty order against Armenia would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury to the U.S. solid urea industry within a reasonably foreseeable time.¹⁶⁰ We further determine that revocation of the antidumping duty order on imports of solid urea from Armenia would not be likely to lead to continuation or recurrence of material injury to the U.S. solid urea industry within a reasonably foreseeable time.¹⁶¹

¹⁵⁸ Chairman Bragg and Commissioner Koplan do not join in this portion of the opinion.

¹⁵⁹ Commissioner Crawford finds that, because revocation of the order will have no discernible adverse impact on the domestic industry, it follows that no injury, much less material injury, will continue or recur if the order is revoked.

¹⁶⁰ Commissioners Crawford and Askey dissenting with respect to the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan. See Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. Commissioner Hillman dissenting with respect to the subject imports from Estonia, Lithuania, Romania, and Tajikistan. See her Dissenting Views.

¹⁶¹ Chairman Bragg and Commissioner Koplan dissenting.

VIEWS OF COMMISSIONER CAROL T. CRAWFORD

Solid Urea from Russia and Ukraine

Investigations Nos. 731-TA-340-E and 340-H (Review)

In these reviews, I concur in my colleagues' determinations that revocation of the antidumping duty orders on solid urea from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. I further concur in, and join, the majority's determination that revocation of the order on solid urea from Armenia is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. However, I do not concur in the majority's determination that revocation of the orders on solid urea from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Rather, I have joined Commissioner Askey in determining that imports from these seven countries are likely to have no discernible adverse impact on the domestic industry if the orders are revoked, and thus that the statute precludes cumulation of any of these subject imports with imports from any other country. Furthermore, I have joined Commissioner Askey in determining that revocation of the orders on solid urea from these seven countries is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.¹

I have joined my colleagues in the findings concerning like product and the domestic industry. I also have joined the discussion of the conditions of competition, in particular the critically important facts that there is a worldwide surplus of solid urea and that China closed its market to imports of solid urea in mid-1997, which resulted in the loss of the largest export market for both Russia and Ukraine.² However, I do not find that solid urea is "fungible" or highly substitutable among sources. The record clearly demonstrates that such a conclusion is not warranted. First, the solid urea supplied by both subject countries and nonsubject countries consists almost entirely of solid urea in prilled form, which indicates that it is likely that solid urea from subject and nonsubject sources are good substitutes for each other. However, only 48 percent of domestic solid urea consists of solid urea in prilled form, which substantially reduces overall substitutability between the domestic product and the subject and nonsubject imports. This conclusion is supported by evidence on the record that prices for the granular form are on average 7 percent higher than prices for the prilled form. In addition, the record indicates that prilled solid urea from the subject countries generally is inferior to domestic prilled solid urea.³ For these reasons, I conclude that solid urea from subject and nonsubject sources are only moderate substitutes for the domestic like product. Finally, as discussed below, I have declined to exercise my discretion to cumulate the subject imports from Ukraine with the subject imports from Russia.

I. CUMULATION

Even if reviews are initiated on the same day, under the statute cumulation is discretionary in five-year reviews. In my view, the statutory framework presents four distinct, sequential analyses that are required when determining whether or not to cumulate subject imports from different countries, in addition to the requirement that the reviews are initiated on the same day.

¹ See Dissenting Views of Commissioner Carol T. Crawford and Commissioner Thelma J. Askey, *infra*.

² FERTECON Report at 47 and 60-61.

³ CR at I-6 to I-8; PR at I-6 to I-7.

First, the subject imports must be eligible for cumulation. In my view, the scopes of the orders under review must be the same for the subject imports to be eligible for cumulation.⁴ Second, the statute precludes cumulation if the Commission determines that subject imports from a country “are likely to have no discernible adverse impact on the domestic industry.”⁵ In my view, it is necessary first to determine that the subject imports are eligible for cumulation and that the statute does not preclude cumulation before determining whether to exercise the discretion to cumulate, which is the third analysis required.⁶ Fourth, even if the discretion to cumulate is exercised, cumulation is only allowable if the subject imports “would be likely to compete with each other and with domestic like products in the United States market.”⁷

In these reviews, the scopes of the orders are the same for all subject countries, and thus the imports are eligible for cumulation. As discussed above, I have joined the majority in determining that the statute precludes cumulation of the subject imports from Armenia because they are likely to have no discernible adverse impact on the domestic industry. In addition, I have joined Commissioner Askey in determining that imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are likely to have no discernible adverse impact on the domestic industry if the orders are revoked, and thus that the statute precludes cumulation of any of these subject imports with imports from any other country.⁸ Therefore, only the subject imports from Ukraine and Russia remain eligible for cumulation, which is discretionary. In these reviews, I decline to exercise my discretion to cumulate the subject imports from Ukraine with the subject imports from Russia. Having declined to exercise my discretion, I need not reach the question of whether the subject imports from Ukraine and Russia compete with each other and with the domestic like product.

II. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SOLID UREA FROM UKRAINE IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

The industry in Ukraine is a significant producer and exporter of solid urea. From 1996 to 1998 Ukraine exported the vast majority, between 92 percent and 97 percent, of its production.⁹ Historically, China has been the largest export market, accounting for 72 percent of exports in 1996, but declining precipitously, to 42 percent of exports in 1997 and to zero in 1998. However, after China closed its market Ukrainian producers were able to replace about one-half of their lost export volumes by exports to Latin American and European markets.¹⁰

⁴ See Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada, Inv. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review), USITC Pub. 3238 at 43 (Sept. 1999).

⁵ 19 U.S.C. § 1675a(a)(7).

⁶ The statute simply states that the Commission *may* cumulate if the competition requirement is met. However, the statute does not require cumulation under any enumerated circumstances, even if the competition requirement is met. Therefore, although competition is a condition precedent to cumulation, it is not necessarily a sufficient reason or the only factor to consider in deciding whether to exercise the discretion to cumulate. Furthermore, because cumulation is not required under any statutorily enumerated circumstances, in my view there is no statutory or analytical presumption of cumulation.

⁷ *Id.*

⁸ See Dissenting Views of Commissioner Carol T. Crawford and Commissioner Thelma J. Askey, *infra*.

⁹ Table I-7.

¹⁰ FERTECON Report at 59 - 61.

Production capacity of 3,350 metric tons in Ukraine has been stable and is projected to remain so in the immediate future. However, capacity utilization declined substantially, from 80.3 percent in 1996 to 61.2 percent in 1998, after China closed its market. Even though exports to other markets have increased, unused capacity in Ukraine currently represents about 17 percent of apparent U.S. consumption.¹¹ Therefore, producers in Ukraine have the ability to export significant volumes of solid urea to the U.S. market. As discussed, producers in Ukraine have demonstrated their ability to develop new export markets. In addition, Ukrainian producers have demonstrated an ability to export solid urea to the North American market, as evidenced by their exports to Canada in the past.¹² For these reasons, I find that imports of solid urea from Ukraine are likely to increase to a significant level if the order is revoked.

The significant volume of subject imports likely would result in a shift in demand toward solid urea from Ukraine, and a shift in demand away from other sources of solid urea. As discussed, subject imports are only moderate substitutes for the domestic product, but quite good substitutes for nonsubject imports. Because nonsubject imports held a market share of 43 percent in 1998,¹³ it is likely that the shift in demand toward the subject imports would result in a substantial shift in demand away from the nonsubject imports. However, the domestic industry held a market share of 57 percent in 1998, and thus it is likely that demand for the domestic product would be reduced by a large portion of the shift in demand toward solid urea from Ukraine. Therefore, it is likely that demand for the domestic product would decrease significantly if the order on solid urea from Ukraine were revoked.

The effect of the revocation on the domestic industry likely would be a decrease in its prices, output and sales, or some combination thereof. The record indicates that solid urea from Ukraine likely would be sold at prices that would be lower than domestic prices.¹⁴ Record evidence indicates that economic efficiency requires the domestic industry to operate its facilities at a capacity utilization of about 80 percent,¹⁵ and thus it is likely that the domestic industry would lower its prices in response to the decreased demand for its product. However, the domestic industry currently operates at a capacity utilization exceeding 90 percent,¹⁶ and thus it is likely that the domestic industry would also reduce its output and sales. Therefore, it is likely that the domestic industry's prices, output and sales, and therefore its revenues, would be reduced significantly if the order is revoked. Consequently, I conclude that revocation of the order on solid urea from Ukraine is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

¹¹ Calculated from Table I-4 and Table I-7.

¹² Ad Hoc Committee Response at Exhibit 10.

¹³ Table I-4.

¹⁴ In Canada, prices for solid urea from Ukraine have been lower than prices for solid urea from the United States. Ad Hoc Committee response at Exhibit 10. In addition, the "constructed Black Sea price", which I find a credible estimate, is lower than the domestic price for solid urea in the U.S. market. Ad Hoc Committee response at 54.

¹⁵ CR at I-11; PR at I-9.

¹⁶ Table I-2.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SOLID UREA FROM RUSSIA IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

The analysis concerning revocation of the order on solid urea from Ukraine applies to revocation of the Russian order as well. The basic facts are the same, but the effects of revoking the Russian order are likely to be greater in magnitude. Unused capacity in Russia is nearly two and one-half times larger than in Ukraine. Russian producers also export the vast majority, between 87 percent and 99 percent, of production.¹⁷ Russia has demonstrated an even greater ability to replace lost export markets: after China closed its market, Russian producers developed new markets in the European Union and Mexico. However, the European Union has imposed an antidumping duty order on solid urea from Russia, and Russian imports are in danger of being shut out of the Mexican market because of an ongoing antidumping dumping investigation.¹⁸ Therefore, Russian producers have an even greater ability and need to export solid urea to the U.S. market. For these reasons, I find that imports of solid urea from Russia are likely to increase to a significant level if the order is revoked.

Like the analysis for imports from Ukraine, the significant volume of subject imports from Russia likely would result in a shift in demand away from other sources of solid urea. As discussed, subject imports are only moderate substitutes for the domestic product, but quite good substitutes for nonsubject imports. Because nonsubject imports held a market share of 43 percent in 1998, it is likely that the shift in demand toward the subject imports would result in a substantial shift in demand away from the nonsubject imports. However, the domestic industry held a market share of 57 percent in 1998, and thus it is likely that demand for the domestic product would be reduced by a large portion of the shift in demand toward solid urea from Russia. Therefore, it is likely that demand for the domestic product would decrease significantly if the order on solid urea from Russia were revoked.

The effect of the revocation on the domestic industry likely would be a decrease in its prices, output and sales, or some combination thereof. The record indicates that solid urea from Russia likely would be sold at prices that would be lower than domestic prices.¹⁹ Record evidence indicates that economic efficiency requires the domestic industry to operate its facilities at a capacity utilization of about 80 percent, and thus it is likely that the domestic industry would lower its prices in response to the decreased demand for its product. However, the domestic industry currently operates at a capacity utilization of nearly 90 percent, and thus it is likely that the domestic industry would also reduce its output and sales. Therefore, it is likely that the domestic industry's prices, output and sales, and therefore its revenues, would be reduced significantly if the order is revoked. Consequently, I conclude that revocation of the order on solid urea from Russia is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

¹⁷ Table I-7.

¹⁸ Ad Hoc Committee Response at 22 and Exhibit 14.

¹⁹ In Canada, prices for solid urea from Russia have been lower than prices for solid urea from the United States. Ad Hoc Committee response at Exhibit 10. In addition, the "constructed Black Sea price", which I find a credible estimate, is lower than the domestic price for solid urea in the U.S. market. Ad Hoc Committee response at 54.

IV. CONCLUSION

Based on the foregoing analysis, I conclude that revocation of the orders on solid urea from Ukraine and Russia is likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

**DISSENTING VIEWS OF
COMMISSIONERS CAROL T. CRAWFORD AND THELMA J. ASKEY**

Section 751(d) requires that the Department of Commerce revoke a countervailing duty or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ Based on the record in these reviews, we concur in the determination that revocation of the antidumping duty orders covering solid urea from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We also concur in the majority’s determination that revocation of the antidumping duty order covering solid urea from Armenia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. However, we determine that revocation of the antidumping duty orders covering solid urea from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

We join our colleagues’ findings concerning the domestic like product and the domestic industry. In addition, to the extent noted, we join their findings with respect to conditions of competition in the U.S. market, the likelihood of continuation or recurrence of material injury insofar as it addresses the likelihood of material injury by reason of the subject imports from Russia and the Ukraine, and the lack of a discernible adverse impact on the domestic industry if the order on the subject imports from Armenia is revoked. Further, except as otherwise noted, Commissioner Askey joins in the majority’s cumulation discussion to the extent that it addresses competition between the subject imports from Russia and Ukraine.

Unlike the majority, we determine that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are likely to have no discernible adverse impact on the domestic industry within a reasonably foreseeable time if the order is revoked. We therefore find that the statute precludes cumulation of these imports with other subject imports. We further determine that revocation of the orders on these imports would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Because our determinations in these seven reviews differ from the majority, our dissenting views follow.

As a preliminary matter, we note that we received two domestic party responses to our notice of institution in this proceeding. The first response was submitted by the Ad Hoc Committee, a trade association whose members include five domestic producers of solid urea. According to the Committee, its five members accounted for between *** and *** percent of domestic production in 1998.² The Commission also received a response from Agrium, a small domestic producer that is not a member of the Committee. Agrium accounted for *** percent of domestic production in 1998.³ The only respondent interested party that filed a response was the Government of Romania, which provided a limited amount of information to the Commission concerning the Romanian urea industry. No other respondent interested party (i.e., no foreign producer, exporter or importer of the subject merchandise) responded to the notice of institution.

Given the level of responses in this review, the Commission has a somewhat limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury

¹ 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

² Committee Response at 65.

³ CR and PR at Table I-1.

in the reasonably foreseeable future.⁴ In a case such as this, where essentially only domestic interested parties (and no respondent producers, exporters, or importers) participate in an investigation or review, those parties have an advantage in terms of being able to present information to the Commission without rebuttal from the other side. Nonetheless, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the information and evidence before it in terms of the statutory criteria.⁵ The Commission cannot properly accept participating parties' information and characterizations thereof without question and without evaluating other available information and evidence.⁶

I. THE SUBJECT IMPORTS FROM BELARUS, ESTONIA, LITHUANIA, ROMANIA, TAJIKISTAN, TURKMENISTAN, AND UZBEKISTAN ARE LIKELY TO HAVE NO DISCERNIBLE ADVERSE IMPACT ON THE DOMESTIC INDUSTRY WITHIN THE REASONABLY FORESEEABLE FUTURE⁷

As discussed below, we find that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan would not be likely to have a discernible adverse impact on the domestic industry if the antidumping orders covering these imports were revoked. Our analysis of the likely impact on the domestic industry of the subject imports from each of these countries follows:

1. Subject Imports from Belarus

Belarus has existing production capacity of 1,131 thousand short tons and has no plans to increase its capacity between now and 2001.⁸ The sole Belarusian producer operated at moderate capacity utilization levels of 66.0 percent, 46.4 percent, and 48.2 percent during the period from 1996 to 1998 and is projected to operate at 60.4 percent of capacity in 1999.⁹ These data might suggest that approximately 40 percent of its production capacity -- which is equivalent to approximately 5.3 percent of total apparent U.S. consumption in 1998 -- is now unused and theoretically available to export urea to the United States if the order were revoked.

⁴ Congress and the administration anticipated that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission's determination would be upheld unless it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int'l Trade Comm'n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission's decision on sanctions).

⁵ 19 U.S.C. § 1675a(a).

⁶ See, e.g., Alberta Pork Producers' Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int'l Trade 1987) ("Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.").

⁷ Commissioner Askey notes that, when performing her analysis of the likely discernible adverse impact of the subject imports under 19 U.S.C. § 1675a(a)(7), she examines whether the subject imports will be likely to have a discernible adverse impact on the industry after revocation of the order. She does not simply engage in a form of negligibility analysis as a substitute for the impact analysis required by the statute. For a full description of her views in this regard, see her "Additional Views" in this proceeding.

⁸ CR and PR at Table I-7; Committee Response at Ex. 12, p.29.

⁹ CR and PR at Table I-7.

However, we find that the record as a whole supports the conclusion that only minimal volumes of subject merchandise from Belarus will enter the United States if the order is revoked. The record demonstrates that the Belarusian producer focuses on its home market and is expected to continue doing so within the reasonably foreseeable future.¹⁰ Its home market sales are projected to be 83.9 percent of its production in 1999, 86.0 percent of its production in 2000, and 87.0 percent of its production in 2001. Therefore, the Belarusian producer does not focus on export sales, which represent a relatively small portion of its overall sales. Given the producer's focus on its home market, it is not reasonable to conclude that it will increase its production to export urea to the United States if the order were revoked. Furthermore, in absolute terms, the producer's total exports are projected to be only 110 thousand short tons per year to all markets between 1999 and 2001, which would equal only 1.3 percent of apparent U.S. consumption in 1998. There is no basis to conclude that all of these exports will be diverted to the United States. Therefore, we find that any increase in the volume of the subject imports from Belarus will be minimal at most in the reasonably foreseeable future. Furthermore, any potential impact on the domestic industry would be diluted by the significant presence of non-subject imports in the U.S. market, which would compete directly with the subject imports. Consequently, we find that the subject imports from Belarus are not likely to have a discernible adverse impact on the domestic industry if the order is revoked.

2. Subject Imports from Estonia

Estonia is a very small supplier of urea. It has an existing production capacity of 240 thousand short tons and has no plans to increase its production capacity between now and 2001.¹¹ It operated at capacity levels of 51.4 percent, 41.7 percent, and 45.2 percent during the period from 1996 to 1998 and is projected to operate at capacity utilization rates between 50 percent and 55 percent of capacity from 1999 to 2001. Although the Estonian producer has available capacity that is equivalent to approximately 120 thousand short tons, this available production capacity would equal only 1.4 percent of total apparent U.S. consumption in 1998.¹² There is, therefore, a small amount of capacity available that the Estonian producer might be able to use increase shipments to the United States within the reasonably foreseeable future. However, the Estonian producer is not projected to increase its capacity utilization rates between 1999 and 2001. Moreover, although the Estonian producer's shipments are primarily export shipments, it has focused almost exclusively on the European market for export sales.¹³ There is no basis to conclude that these exports will be diverted from the European market if the order is revoked.

Accordingly, we find that any increase in the volume of the subject imports from Estonia will be minimal at most in the reasonably foreseeable future. Furthermore, any potential impact on the domestic industry would be diluted by the significant presence of non-subject imports in the U.S. market, which would compete directly with the subject imports. Consequently, we find that the subject imports from Estonia are not likely to have a discernible adverse impact on the domestic industry if the order is revoked.

3. Subject Imports from Lithuania

¹⁰ Committee Response at Ex. 12, p. 29.

¹¹ CR and PR at Table I-7; Committee Response at Ex. 12, p. 32.

¹² CR and PR at Table I-4; Committee Response at Ex. 12, p. 33.

¹³ Committee response at Ex. 12, p. 33.

Like Estonia, Lithuania is a very small supplier of urea. The sole Lithuanian producer has existing production capacity of 276 thousand short tons, and has no plans to increase its capacity between now and 2001.¹⁴ During the period from 1996 to 1998, the Lithuanian producer operated at capacity utilization rates of more than 100 percent each year. It is projected to do so again in 1999 and to continue to do so through 2001.¹⁵ Therefore, there is no available unused capacity in Lithuania.

Furthermore, although Lithuania exports a significant portion of its production, these exports have been almost exclusively directed at the European market.¹⁶ There is no basis to conclude that these shipments to Lithuania's traditional export markets will be diverted to the U.S. market if the order is revoked. Therefore, we find that it is not likely that the subject imports from Lithuania will increase in the reasonably foreseeable future. Accordingly, we also find that it is unlikely that the subject imports from Lithuania will have a discernible adverse impact on the domestic industry if the order is revoked.

4. Subject Imports from Romania.

On the surface, the Romanian producers appear to have substantial available capacity that could be used to increase production as well as exports to the United States if the order were revoked. The Romanian producers' production capacity remained at 2,649 short tons during the period from 1996 to 1998.¹⁷ Although the Romanian producers do not have plans to increase their existing capacity, capacity utilization plummeted during the period of review, from 62.8 percent in 1996 to 26.8 percent in 1997 to only 4.2 percent in 1998. Thus, the Romanian producers appear to have unused capacity of more than 2,500 short tons,¹⁸ which would be equivalent to nearly 30 percent of total U.S. consumption in 1998.

Nonetheless, the record also indicates that there is little likelihood that the Romanian producers would quickly increase production significantly in the reasonably foreseeable future. The Romanian producers have completely idled their urea capacity and are no longer producing urea in any significant amounts. All nine urea plants in Romania are reported to be "currently idle," and the industry is reportedly "currently doing little more than covering domestic demand at present." Moreover, the industry is reported to be in a "state of uncertainty as the government looks to sell any viable units and rationalize others."¹⁹ As a result, the Romanian producers are projected to continue operating at very low capacity utilization rates through 2001 (only 14 percent in 2000 and 15 percent in 2001). More specifically, Romanian production is projected to increase by only 160 thousand short tons annually during 2000 and 2001, and most of this increase is projected to be consumed domestically.²⁰

This evidence is consistent with the statements made by the Government of Romania (GOR) in its response. The GOR reported that the Romanian industry has completely changed since the original investigation, with the original Romanian producers no longer being in existence or no longer involved in urea production. The GOR also notes that the industry's capacity levels have declined by nearly 23 percent since the original period of investigation (from 3,427 thousand short tons to 2,649 thousand short tons) and that many, if not all, of the Romanian producers have shut down their facilities since 1996. Finally, the Government notes

¹⁴ CR and PR at Table I-7; Committee Response at Ex. 12, p.35.

¹⁵ CR and PR at Table I-7; Committee Response at Ex. 12, p.36.

¹⁶ Committee Response at Ex. 12, p. 37.

¹⁷ CR and PR at Table I-5.

¹⁸ CR and PR at Tables I-5 & I-4.

¹⁹ Committee Response at Ex. 12, pp. 18 & 23.

²⁰ Committee Response at Ex. 12, p. 22.

that it would take considerable investment in these facilities to start them up again.²¹ This latter statement is consistent with the record evidence indicating that it is costly to maintain and then restart production from idled facilities.

For these reasons, we find that it is unlikely that the Romanian producers will be able to quickly restart their idled operations. Moreover, the record provides no indication that, after essentially shutting down their facilities, the Romanian producers have any plans to resume significant production, even if the order were revoked. Therefore, we find that it is unlikely that Romanian producers will resume significant production activities within the reasonably foreseeable future simply for the purpose of exporting urea to the United States. As a result, we find that it is not likely that the subject imports from Romania will have a discernible adverse impact on the domestic industry within the reasonably foreseeable future if the order is revoked.

5. Subject Imports from Tajikistan

Tajikistan has only one urea production facility and this facility has operated only intermittently since the early 1990's. Tajikistan has existing production capacity of only 220 thousand short tons, and has no plans to increase its capacity between now and 2001.²² It has operated at very low but increasing levels of capacity utilization during the period from 1996 to 1998, with capacity utilization increasing from 4.5 percent in 1996 to 20.0 percent in 1997 and 32.5 percent in 1998. Capacity utilization is projected to remain at 32.5 percent from 1999 to 2000. Although the Tajikistan producer has unused capacity of approximately 149 thousand short tons, this available capacity equals only 1.8 percent of apparent U.S. consumption in 1998.²³ Moreover, there is no basis to conclude that exports to the United States will occur in the future. There were no exports to any markets from Tajikistan between 1996 and 1998 and no exports to any markets are projected through 2001.²⁴ Therefore, there is no basis to conclude that Tajikistan will export urea to the United States if the order is revoked.

As a result, we find that it is not likely that the subject imports from Tajikistan will increase at all in the reasonably foreseeable future. Accordingly, we also find that it is unlikely that the subject imports from Tajikistan will have a discernible adverse impact on the domestic industry if the order is revoked.

²¹ See CR at I-24-I-27, PR at I-20.

²² CR and PR at Table I-7; Committee Response at Ex. 12, p.51.

²³ CR and PR at Table I-7 and Table I-4.

²⁴ Committee Response at Ex. 12, p. 51.

6. Subject Imports from Turkmenistan.

Turkmenistan does not have any existing urea production facilities, and therefore has no current or existing capacity to produce urea.²⁵ Turkmenistan reportedly has plans to bring new urea production facilities on line by the end of 1999. However, these facilities' capacity is relatively small compared to the size of the U.S. market, and it is unclear when the facilities will actually begin production.²⁶

Nonetheless, although the projected new production capacity of the facilities would equal approximately 4.3 percent of apparent U.S. consumption in 1998, even the domestic producers agree that this capacity will not become fully operationally until one to two years after the facility is completed.²⁷ Moreover, Turkmenistan is projected to export only 110 thousand short tons to all markets in 1999, 220 thousand short tons to all markets in 2000, and 165 thousand short tons to all markets in 2001. These export levels would equal 1.3 percent, 2.6 percent, and 1.9 percent of total apparent U.S. consumption in 1998, respectively.²⁸ There is no basis to conclude that all of these exports would be diverted to the U.S. market if the order were revoked.

Accordingly, we find that any increase in the volume of the subject imports from Turkmenistan will be minimal at most in the reasonably foreseeable future. Furthermore, any potential impact on the domestic industry would be diluted by the significant presence of non-subject imports in the U.S. market, which would compete directly with the subject imports. Consequently, we find that the subject imports from Turkmenistan are not likely to have a discernible adverse impact on the domestic industry if the order is revoked.

7. Subject Imports from Uzbekistan

Uzbekistan has a fairly significant production capacity of 661 thousand short tons and is projected to increase its capacity levels by 76 thousand short tons in 2000.²⁹ Nonetheless, while the producers in Uzbekistan are not operating at 100 percent capacity, they have operated at relatively high capacity utilization rates during the period from 1996 through 1998, with their utilization rates being 68 percent in 1996, 75 percent in 1997, and 58.3 percent in 1998. Their utilization rates are expected to be 58.3 percent in 1999 as well. Accordingly, Uzbekistan has existing unused capacity of approximately 276,000 short tons. It might therefore be reasonable to conclude that Uzbek producers have the ability to increase production and exports to the United States.

This unused capacity represents only about 3 percent of U.S. consumption.³⁰ Moreover, the producers in Uzbekistan are focused primarily on the domestic market. In this regard, the large bulk of their shipments have historically been domestically consumed.³¹ Indeed, the only significant export market for Uzbekistan has been the Chinese market, which is not surprising given the geographic proximity of the two countries and the fact that Uzbekistan is land-locked, without direct access to a sea port. In 1996, exports to China accounted for 92 percent of Uzbekistan's total exports. Following the closing of the Chinese market in mid-1997, exports to China

²⁵ CR and PR at Table I-7.

²⁶ In this regard, the world production study submitted by petitioners appears to assume this production will come on line in 1999. Committee Response at Ex. 12, p.52.

²⁷ Data submitted by the Committee indicates that the facilities will be operating at 100 percent capacity in 2000 (after completion of the facilities in 1999) while data submitted by Agrium indicates that the facilities will only operate at 100 percent capacity in 2001. Id.

²⁸ Committee Response at Ex. 12, p. 53; CR and PR at Table I-4.

²⁹ CR and PR at Table I-7; Committee Response at Ex. 12, p. 65.

³⁰ See CR and PR at Table I-4.

³¹ CR and PR at Table I-7; Committee Response at Ex. 12, p.65.

dropped to 42 percent of its total exports. In absolute terms, 1996 exports to China were 164,000 short tons out of total exports of 179,000 short tons, while 1997 exports to China were 18,000 short tons out of total exports of 42,000 short tons. Thus, exports to other countries were presumably 14,000 short tons in 1996 and 25,000 short tons in 1997. In 1998 and 1999, total exports, i.e. excluding exports to China, are projected to be 17,000 short tons each year. Based on these data, it is reasonable to conclude that Uzbekistan is not particularly export-oriented, and, to date, efforts to develop new export markets to replace the exports to China have not been undertaken, have not been successful, or at least take a number of years to accomplish.³²

Our conclusion in this regard is consistent with the Fertecon study. That study projects a significant increase in exports in 2000, at least 2½ years after the closing of the Chinese market. Therefore, it is reasonable to conclude that it would take at least 2½ years to develop the U.S. market as an export market.³³ This conclusion is supported by the fact that there have been no exports from Uzbekistan to the U.S. or Canadian market since the order was issued. Moreover, the study projects that the producers in Uzbekistan will export a total of only 110,000 short tons in 2000 and 165,000 short tons in 2001. These projected exports represent only 1.3 percent and 2.0 percent of domestic consumption, respectively.³⁴

Given Uzbekistan's geographic isolation, its lack of exports to North America, and its general lack of exports to markets other than China, it is reasonable to conclude that Uzbekistan's exports to the U.S. market would not be significant if the order is revoked. Furthermore, any potential impact on the domestic industry would be diluted by the significant presence of non-subject imports in the U.S. market, which would compete directly with the subject imports. Consequently, we find that the subject imports from Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the order is revoked.

II. NO LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS FROM BELARUS, ESTONIA, LITHUANIA, ROMANIA, TAJIKISTAN, TURKMENISTAN, AND UZBEKISTAN

As discussed in detail above, we determine that the subject imports from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan are not likely to have a discernible adverse impact on the domestic industry if the antidumping orders covering these imports were revoked. Accordingly, in accordance with the language of section 1675a(a)(7) of the statute, we have not cumulated the subject imports from these countries for purposes of our sunset analysis. For the reasons outlined above, we further find that none of the subject imports from any of these non-cumulated countries are likely to have significant volume, price or other impacts on the domestic industry after revocation of the antidumping orders covering these countries. Accordingly, we find that revocation of the orders on these imports would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

³² CR and PR at Table I-4.

³³ Committee Response at Ex. 12, p.65.

³⁴ CR and PR at Table I-4.

**Dissenting Views of Commissioner Jennifer A. Hillman
with Respect to Solid Urea from Romania, Estonia, Lithuania, and Tajikistan**

I concur with the Views of the Commission above that imports of solid urea from Armenia are likely to have no discernible adverse impact on the domestic industry and therefore should not be cumulated with other subject imports pursuant to section 752(a)(7) of the Tariff Act of 1930.¹ I write these additional views to explain my determination that solid urea imports from four other subject countries – Romania, Estonia, Lithuania, and Tajikistan – are also likely to have no discernible adverse impact.

2. No discernible adverse impact

The starting point for these four countries – indeed for each of the subject countries – is that none is currently exporting any solid urea to the United States. However, our task in five-year reviews is to determine likely exports in the event the antidumping orders on solid urea are revoked. This requires an examination of information regarding the foreign industries at issue and other relevant competitive and market conditions.

Romania. Although Romania has substantial capacity to produce solid urea (2.4 million metric tons per annum)², other record information indicates that it is not in a position to export meaningful quantities (if any) of solid urea to the United States within a reasonably foreseeable time.

The Government of Romania responded to our notice of institution of the review and provided information regarding the solid urea industry in Romania. The Government indicated that the six urea producers that comprise the Romanian solid urea industry were formerly a single state-owned and -operated enterprise that is now being privatized.³ The Government further maintained that, although five of six producers now had private ownership, these newly privatized entities were not yet in a position to conduct substantial operations, and that “[c]onsiderable additional investment remains necessary to bring the industry to a reasonably healthy and competitive condition.”⁴ The Government indicated that the industry produced only 122,000 metric tons in 1998, and that two facilities with substantial capacity had either closed or were in the process of being liquidated.⁵

The report prepared for the domestic industry by Fertecon confirms the information provided by the Government of Romania.⁶ Fertecon reported that all urea production plants in Romania are understood to be currently idle, and that no new projects are planned.⁷ Fertecon reported that Romania’s solid urea production dropped from 1.5 million metric tons in 1996 to 100,000 metric tons in 1998, and that 1998 production

¹ 19 U.S.C. § 1675a(a)(7).

² CR and PR at Table I-5.

³ Response of the Government of Romania to the Notice of Initiation of Sunset Review, April 20, 1999 at 6.

⁴ *Id.*

⁵ *Id.* at 5.

⁶ See Response of the Ad Hoc Committee of Domestic Nitrogen Producers to Notice of Institution of Five-Year Sunset Reviews, April 20, 1999, at exhibit 12 (“Fertecon report”).

⁷ *Id.* at 18.

represented a mere 4 percent of capacity.⁸ Fertecon summed up the position of the Romanian solid urea industry as follows:

The industry is doing little more than covering domestic demand at present. A very small recovery in output and exports is forecast for the period to 2001. The Romanian industry is currently in a state of uncertainty as the government looks to sell any viable units and rationalize others. There have been some sales of plants, but generally to companies of little financial standing.⁹

Although Romania's large productive capacity would enable it to produce and export more-than-*de minimis* quantities of solid urea to the United States, I find, in light of the information described above, that such an outcome is not likely.

Estonia. Estonia has a small solid urea industry comprised of a single 30-year-old production complex with an annual productive capacity of 218,000 metric tons.¹⁰ It is currently operating at approximately 50 percent of capacity, with the vast majority of its production exported.¹¹ As would be expected given its proximity to the European Union (EU), which is a major consumer of solid urea, nearly all of Estonia's exports are destined for the EU.

Given that the EU is Estonia's natural export market, I find it unlikely that Estonia would divert substantial exports from the EU market or to otherwise ramp up production for export to the United States. The small size of Estonia's current unused capacity (just over 100,000 metric tons) indicates that Estonia has little potential to export solid urea to the United States in a manner that would noticeably affect the U.S. solid urea industry.

Lithuania. Lithuania has a small solid urea industry comprised of a single 28-year-old production complex with an annual productive capacity of 250,000 metric tons.¹² It is currently operating at full capacity. A little more than half of its production is exported, virtually all to the EU, with the remainder presumably being sold for home-market consumption.¹³

Given that the EU is Lithuania's natural export market, I find it unlikely that Lithuania would divert substantial exports from the EU market for export to the United States. Moreover, Lithuania has no excess productive capacity that could be used for producing solid urea for export to the United States.

Tajikistan. Tajikistan has a small solid urea industry comprised of a single 32-year-old plant with an annual productive capacity of 200,000 metric tons.¹⁴ It is currently operating at 33 percent of capacity, with no

⁸ *Id.* at 19.

⁹ *Id.* at 23.

¹⁰ CR and PR at Table I-7, Fertecon report at 32.

¹¹ Fertecon report at 33.

¹² CR and PR at Table I-7, Fertecon report at 35.

¹³ Fertecon report at 36-37.

¹⁴ CR and PR at Table I-7, Fertecon report at 50.

exports and all production presumably destined for home-market consumption.¹⁵ The Fertecon report observes that Tajikistan’s solid urea plant “has operated only intermittently since the early 1990s” and “has been forced to close for periods of time due to internal fighting within the country.”¹⁶

The above facts paint a picture of an industry in Tajikistan that is unlikely to export solid urea to the United States so as to have a discernible adverse impact on the domestic solid urea industry.

Other subject countries. With respect to the remaining subject countries – Belarus, Russia, Turkmenistan, Ukraine, and Uzbekistan – I join the majority of the Commission in *not* finding that solid urea imports from these countries are likely to have no discernible adverse impact on the domestic solid urea industry. I add a few remarks here in order to contrast these countries with the countries described above whose imports I have found likely to have no discernible adverse impact.

Each of the remaining subject countries has or will have a higher productive capacity (in some cases many times higher), and a higher unused capacity, than the countries described above (except Romania, see below). The capacity of these remaining countries is as follows: Russia, 5.9 million metric tons; Ukraine, 3.4 million metric tons; Belarus, 1.0 million metric tons; Uzbekistan, 600,000 metric tons; Turkmenistan, 330,000 metric tons.¹⁷

Other facts make it even less appropriate to find that any of these remaining countries are not likely to have a discernible adverse impact. With respect to Turkmenistan, its capacity is expected to consist of a new plant. The new plant will presumably be of at least a somewhat more modern and efficient design, and thus be more competitive, than the 28 to 32 year-old plants in Estonia, Lithuania, and Tajikistan. Moreover, since it is a new plant, all of Turkmenistan’s expected 330,000 metric ton productive capacity is potentially available for export to the United States. This is in sharp contrast to, in particular, Lithuania, which is operating at full capacity to serve the EU and home markets.

With respect to Uzbekistan, not only is its productive capacity more than twice that of Estonia, Lithuania, or Tajikistan, but the Fertecon report gives a positive assessment of its future potential and prospects, observing that, “[w]ith substantial natural gas reserves, there are plans to expand nitrogen capacity by revamping existing units and building new plants.”¹⁸

Finally, for none of the remaining countries is there record information indicating that the foreign industries are experiencing the kind of transitional difficulties that the Fertecon report and the Government of Romania stated are being faced by the solid urea industry in Romania.

3. No likely material injury

Having found that imports from Romania, Estonia, Lithuania, and Tajikistan are likely to have no discernible adverse impact on the domestic industry, I further find that revocation of the antidumping duty orders with

¹⁵ Fertecon report at 51.

¹⁶ *Id.* at 50.

¹⁷ CR and PR at Table I-7.

¹⁸ Fertecon report at 63.

respect to these countries is not likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.

ADDITIONAL VIEWS OF COMMISSIONER THELMA J. ASKEY

This review raises a significant new issue concerning the Commission's decision to cumulate imports in sunset reviews. This review is one of four sunset reviews to date in which the Commission has considered whether to cumulate imports.¹ In these reviews, the Commission has addressed several cumulation-related issues in our sunset analysis. Amongst other things, the Commission has considered in these reviews whether imports from a subject country are likely to have "no discernible adverse impact on the domestic industry" upon revocation of the order covering the imports. Because of the relative novelty of this issue and the complexity of the overall analysis required in sunset reviews, I am taking the opportunity to address this issue in this proceeding.

My analysis of the meaning of the phrase "no discernible adverse impact on the domestic industry" begins with the plain language of section 752(a)(7) of the Tariff Act of 1930, which is the statutory provision governing the Commission's cumulation analysis in sunset reviews. Section 752(a)(7) provides that:

[T]he Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²

As can be seen, section 752(a)(7) clearly states that the Commission has the discretion to cumulate the subject imports in its sunset analysis, as long as the statutory requirement of competition between the subject countries and the domestic like product is satisfied.³ Section 752(a)(7) also clearly states, however, that the Commission is precluded from exercising this discretion if imports from a country subject to review are likely to have "no discernible adverse impact on the domestic industry" upon revocation of the order.⁴

Thus, under this provision, the Commission must find that the subject imports from a country will have a "discernible adverse impact on the domestic industry" after revocation of the order before cumulating those imports with other subject imports. Accordingly, our task under this provision is a straightforward one. To determine whether we are precluded from cumulation, we must focus on how significantly the imports will impact the condition of the industry as a result of revocation, and not simply on whether there will be a small volume of imports after revocation, that is, by simply assessing their negligibility after revocation of the

¹ See Sugar from the European Union; Sugar from Belgium, France and Germany; and Sugar and Syrups from Canada, Inv. Nos. 104-TAA-7; AA1921-198-200 & 731-TA-3 (Reviews), USITC Pub. 3238 at 16-17 (September 1998); Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-26 (Reviews); Solid Urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan, Inv. Nos. 731-TA-339 (Reviews); and Iron Metal Castings from India, Heavy Iron Construction Castings from Brazil, and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 303-TA-13, 701-TA-249 & 731-TA-262, 263, and 265 (Reviews). The Commission made its determinations in the sugar proceeding in September 1998 and voted on the three remaining cases last week.

² 19 U.S.C. § 1675a(a)(7).

³ Of, course, the Commission may only cumulate imports from a subject country if reviews for those imports were initiated on the same day as well. Id.

⁴ 19 U.S.C. § 1675a(a)(7).

order. Indeed, it is important to note that the language of the statute does not contain any language indicating that the Commission should limit its analysis under this provision to an assessment of whether subject import volume levels are likely to be minimal after revocation of the order.

Of course, I agree that, in many cases, a minimal volume of subject imports will not be likely to have a discernible adverse impact on the industry as a result of revocation. Nonetheless, the language of section 752(a)(7) does not limit the section's scope to this form of volume-based analysis. This distinction is important because the level of adverse impact on an industry will not always be linked to the actual volume of subject imports. For example, a minimal volume of imports that would otherwise qualify as "negligible" under the current provisions of the statute⁵ might have a discernible adverse impact on an industry if the merchandise in question is highly price-sensitive. Similarly, a non-negligible level of imports might not always have a "discernible adverse impact" on the industry after revocation of an order if conditions of competition are such that the volume and price effects of the imports will not change discernibly after revocation. Given this, I believe that it would not be appropriate under section 752(a)(7) to make an affirmative finding of discernible adverse impact on the industry unless there would be a discernible change in the industry's condition by reason of imports as a result of revocation of the order.

This reading of section 752(a)(7) is supported by its legislative history. The Statement of Administrative Authority for the URAA -- the binding expression of intent with respect to the meaning of the URAA -- contains no suggestion that the "discernible adverse impact" analysis is to be equated with some form of negligibility analysis.⁶ Indeed, the only piece of legislative history addressing the appropriateness of a negligibility approach under section 752(a)(7) is the Senate's joint report on the URAA.⁷ However, that language simply indicates that section 752(a)(7) allows the Commission to use a "negligibility" approach as one possible component of its "discernible adverse impact" analysis.⁸ Moreover, the Senate report states specifically that it would not be "appropriate to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision."⁹ This clearly indicates that Congress intended the "discernible adverse impact" analysis under 752(a)(7) to differ from the negligibility analysis set forth in the current statute. I would add that the House report, like the SAA, contains no statement about the need for a negligibility-based analysis under section 752(a)(7).¹⁰

A comparison of the provisions of section 752(a)(7) with the negligibility provisions of the statute that were in existence prior to the URAA is also useful. Before the URAA, the Commission was given discretion not to cumulate imports from subject countries that competed with each other and the domestic merchandise if the imports were "negligible and ha[d] no discernible adverse impact on the domestic

⁵ 19 U.S.C §1677(24).

⁶ In fact, the only statement in the SAA discussing this provision states that "the Commission shall not cumulate imports from any country if those imports are likely to have no discernible impact on the domestic industry." SAA at 887. This sentence appears to imply that the discernible adverse impact analysis must be performed on an individual country basis.

⁷ S. Rep. 103-412 at 51 (stating that the "Committee believes that it is appropriate to preclude cumulation where imports are negligible"). The report is a joint report of the Senate Committee on Finance, the Senate Committee on Agriculture, Nutrition and Forestry, and the Senate Committee on Governmental Affairs.

⁸ Id.

⁹ Id.

¹⁰ H. Rep. 103-826 at 62.

industry.”¹¹ When enacting section 752(a)(7), however, Congress chose to include in section 752(a)(7) only the “discernible adverse impact” language from the prior law and specifically declined to include in the provision any reference to “negligibility” or “likely negligibility” as a requirement for not cumulating subject imports in a sunset proceeding. This clearly indicates that Congress did not intend the discernible adverse impact analysis required by 752(a)(7) to be equated with a negligibility analysis.

In sum, I believe that the statute clearly requires that the Commission to find that revocation of an antidumping or countervailing duty order will result in a discernible adverse impact on the industry by the subject imports from an individual country before cumulating those imports with other imports in its sunset analysis. In my view, the language of the statute simply does not allow the Commission to examine current or likely volumes of imports and assess whether those volumes are likely to be “discernible” without also considering whether revocation of the order would result in a change of the price or volume levels of imports such that they will have a discernible adverse impact on the industry. I believe this interpretation of the law is consistent with the clear language of the statute and the language of the SAA as well as with the general policy underlying the cumulation provision of the sunset portions of the statute.

¹¹ 19 U.S.C. §1677(7)(c)(v) (1994).

